

- (c) *Nasturtium*: claim 8; or
- (d) *Lunaria*: claims 9-10, and 17.

Applicants respectfully traverse the restriction and election requirements and provisionally elect the subject matter of Group I, presented in claims 1-13, 17, and 29, drawn to a method for the production of a VLCFA molecule in a plant seed cell, for prosecution. Applicants further provisionally elect the species of *Brassica*, presented in claims 4-6 for further prosecution.

However, Applicants submit that the Patent Office has not proven that the search and examination of the entire application would impose an undue burden. Applicants submit that the complete examination would be handled most expeditiously by treating all of the pending claims as a single entity. As MPEP 803 directs, “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” Applicants respectfully submit that the Examiner has not shown that a search and examination of the entire application would cause a serious burden. Rather, a serious burden would arise if the application were restricted.

No serious burden is created for the Examiner by running a search on the methods of Group I and the methods of Group II. These methods involve many of the same or similar regulatory elements and processes. Moreover, the methods for decreasing the proportion of VLCFA in a plant described in the specification involve the antisense strands to DNA sequences used for the production of VLCFA. *See* Specification at page 8, line 10 through page 9, line 18 and Table 8. A single search may be run for such sequences in conjunction with databases such as those available at <http://www.ncbi.nlm.nih>.

Furthermore, the Examiner has not demonstrated that the search and examination of all species of the claimed invention would impose a serious burden. Databases such as the one above may also be used to run a combined search for the molecule-altering DNA sequences of the claimed invention. As such, the search and examination of the entire range of claimed DNA sequences is more in line with the USPTO policy as set forth in the Manual of Patent Examining Procedure

stating that “to further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Commissioner has decided ... to permit a reasonable number of such nucleotide sequences to be claimed in a single application.” (MPEP, 8<sup>th</sup> ed., August 2001, Section 803.04). The MPEP further provides that “[i]t has been determined that normally ten sequences constitute a reasonable number for examination purposes.” (emphasis added) *Id.*

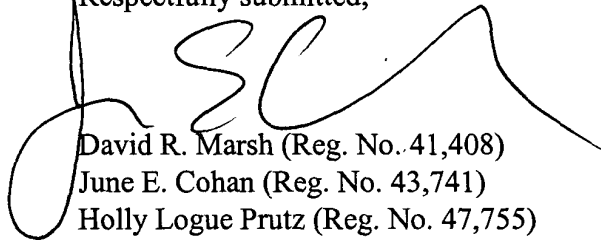
The Examiner has presented no evidence to support the departure from the articulated USPTO policy. However, the Examiner has indicated that the claimed invention will not be limited to the elected species if a generic claim is finally held allowable. Office Action at page 3. Therefore, in the event that the Examiner maintains the election requirement, Applicants respectfully request reconsideration and rejoining of the subject matter of these groups upon an indication of allowable subject matter in the application.

Based upon the foregoing, Applicants submit that the restriction and election requirements are improper and therefore must be withdrawn. In order to facilitate prosecution, however, Applicants have provisionally elected, with traverse, the subject matter of Group I and the species presented in claims 4-6 for prosecution. A list of all claims elected by this response is attached for the Examiner’s convenience.

Should the Examiner have any questions regarding this application, the Examiner is invited to telephone the undersigned at the number provided.

Applicants do not believe that any fees or extensions of time under 37 C.F.R. § 1.136 are required in conjunction with this submission other than those set forth in the accompanying letter. However, in the event that extensions of time are necessary to prevent the abandonment of this patent application then such extensions of time are hereby petitioned. The Commissioner is hereby authorized to charge any fees that may be required in conjunction with this submission and/or credit any overpayment to Deposit Account No. 50-1824, referencing matter no. 16518.025.

Respectfully submitted,



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